

In the Matter of Merchant Mariner's Document No. Z-82213 and all other Seaman Documents

Issued to: LAURENT JANSSENS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1022

LAURENT JANSSENS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 29 August 1957, an Examiner of the United States Coast Guard at New York, New York, suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification alleges that while serving as an oilier on board the American SS EDWIN M. STANTON under authority of the document above described, on or about 29 July 1957, Appellant assaulted, with his fist, a fellow crew member named Ventura. The portion of the original specification alleging, in addition, assault by kicking Ventura was found not proved by the Examiner. Ventura was charged with assaulting Appellant with a knife and the two cases were heard in joinder with the consent of both seamen.

The two seamen entered pleas of not guilty. The only evidence introduced at the hearing consisted of the testimony of Appellant and Ventura. The Examiner considered the testimony of both seamen in arriving at his decision in each of the two cases. He concluded that the charge had been proved and the specification proved in part against Appellant. An order was entered suspending all documents, issued to Appellant, for a period of one month outright and 5 months on 12 months' probation. The same order was entered in Ventura's case.

The decision was mailed on 29 August, 1957. Notice of appeal was timely filed on 9 September and a supporting brief was filed on 3 January 1958.

FINDINGS OF FACT

On 29 July 1957, Appellant was serving as an oiler on board the American SS EDWIN M. STANTON and acting under authority of his Merchant Mariner's Document No. Z-82213 while the ship was in the port of Le Havre, France.

On this date, Appellant was standing the 1600 to 2400 port watch in the engine room with his watch partner, fireman-watertender Ventura. One man was required to remain in the engine room at all times. At 1800, Ventura said he would be back in a few minutes and went topside. Appellant looked for Ventura later and was informed that he had gone ashore. Ventura returned to the engine room at 2300. Appellant complained about the prolonged absence. An exchange of insulting remarks followed. Appellant then used his fist to strike Ventura a single blow in the face which knocked his glasses askew. Ventura grabbed a knife, advanced toward Appellant and cut him on the thigh when he kicked at Ventura's knife hand. Appellant left the engine room to receive medical treatment. Nobody else was present when this incident occurred.

Appellant has about thirty years service without any prior record. There was no previous difficulty between these two seamen.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that there is no credible evidence to support the finding that Appellant struck Ventura. His face was not even bruised. Appellant's testimony is consistent while Ventura's is full of contradictions. Appellant acted solely in self-defense. It is requested that the findings be reversed and the order expunged from Appellant's otherwise clear record.

APPEARANCE ON APPEAL: Messrs. Mason and Paven of Boston, Massachusetts, by Lawrence Mason, Esquire, of Counsel.

OPINION

The Examiner as the trier of the facts was in the best position to judge the credibility of the two witnesses who appeared before him. There were no other eyewitnesses to the events in issue. The Examiner accepted Ventura's testimony that he was first struck by Appellant and the latter's testimony that Ventura was the aggressor when he held a knife in his hand. After reviewing the evidence, it does not appear that such findings by the Examiner should be set aside because they are not "clearly erroneous." This is the usual test to be applied. The trier of the facts may draw inferences from contradictions in the testimony of even the same witness. General Casualty Co. V. School District No. 5 (C.A.9, 1956), 233 F2d 526.

Accepting these findings, the conclusion is apparent that Appellant was guilty of the initial attack and only acted in

self-defense after Ventura picked up a knife.

ORDER

The order of the Examiner dated at New York, New York, on 29
August 1957, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 16th day of April, 1958.